

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

STICHTING PENSIOENFONDS ABP,

Plaintiff,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER, EDWARD
M. SCOLNICK, DAVID W. ANSTICE, and
PETER S. KIM

Defendants.

CASE NO. 2:05-CV-05060-SRC-CLW

NORGES BANK,

Plaintiff,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER,
EDWARD M. SCOLNICK, DAVID W.
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04021-SRC-CLW

[Caption continued on following page]

DEKA INVESTMENT GmbH, DEKA
INTERNATIONAL S.A. LUXEMBURG, DEKA
INTERNATIONAL (IRELAND) LIMITED,
DEKA FUNDMASTER
INVESTMENTGESELLSCHAFT MBH,
INTERNATIONAL FUND MANAGEMENT
S.A., MUNICH ERGO ASSET MANAGEMENT
GmbH, INTERNATIONALE FONDS SERVICE
AG, INTERNATIONALE
KAPITALANLAGEGESELLSCHAFT MBH,
METZLER INVESTMENT GmbH, and
FRANKFURTER SERVICE
KAPITALANLAGEGESELLSCHAFT mbH ,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER,
EDWARD M. SCOLNICK, DAVID W.
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04022-SRC-CLW

UNION ASSET MANAGEMENT HOLDING
AG, OPPENHEIM PRAMERICA ASSET
MANAGEMENT S.à.r.l., ERSTE-SPARINVEST
KAPITALANLAGEGESELLSCHAFT m.b.H.,
and OPPENHEIM
KAPITALANLAGEGESELLSCHAFT m.b.H.,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER,
EDWARD M. SCOLNICK, DAVID W.
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04023-SRC-CLW

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AFA LIVFÖRSÄKRINGSAKTIEBOLAG, AFA
TRYGGHETSFÖRSÄKRINGSAKTIEBOLAG,
AFA SJUKFÖRSÄKRINGSAKTIEBOLAG on
its own behalf and on behalf of
KOLLEKTIVAVTALSSTIFTELSEN
TRYGGHETSFONDEN TSL, ALECTA
PENSIONS FÖRSÄKRING ÖMSESIDIGT,
SJUNDE AP-FONDEN, DANSKE INVEST
ADMINISTRATION A/S, SWEDBANK ROBUR
AB, AMF PENSION FONDFÖRVALTNING
AB, ARBETSMARKNADSFÖRSÄKRINGAR
PENSIONS FÖRSÄKRINGSAKTIEBOLAG,
SKANDINAVISKA ENSKILDA BANKEN AB
on its own behalf and on behalf of SEB
INVESTMENT MANAGEMENT AB, SEB
ASSET MANAGEMENT S.A. and GAMLA
LIVFÖRSÄKRINGSAKTIEBOLAGET SEB
TrYGG LIV,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER,
EDWARD M. SCOLNICK, DAVID W.
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04024-SRC-CLW

[Caption continued on following page]

ALLIANZ GLOBAL INVESTORS
KAPITALANLAGEGESELLSCHAFT MbH;
ALLIANZ GLOBAL INVESTORS
LUXEMBOURG S.A.; and ALLIANZ GLOBAL
INVESTORS IRELAND LIMITED,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER,
EDWARD M. SCOLNICK, DAVID W.
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04451-SRC-CLW

DWS INVESTMENT GmbH, PIONEER
INVESTMENTS
KAPITALANLAGEGESELLSCHAFT mbH,
DEUTSCHE ASSET MANAGEMENT
INVESTMENTGESELLSCHAFT mbH,
WIENER STÄDTISCHE VERSICHERUNG AG
VIENNA INSURANCE GROUP,
LIECHTENSTEINISCHE LANDESBANK
AKTIENGESELLSCHAFT, DWS (AUSTRIA)
INVESTMENTGESELLSCHAFT mbH,
LANDESBANK BERLIN INVESTMENT GmbH,
and LRI LANDESBANK RHEINLAND-PFALZ
INTERNATIONAL S.A.,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER,
EDWARD M. SCOLNICK, DAVID W.
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04546-SRC-CLW

[Caption continued on following page]

KBC ASSET MANAGEMENT NV, PIONEER
INVESTMENT MANAGEMENT LTD.,
PIONEER INVESTMENT MANAGEMENT
SGRpa, and PIONEER INVESTMENTS
AUSTRIA GmbH,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER, EDWARD
M. SCOLNICK, DAVID W. ANSTICE, and
PETER S. KIM

Defendants.

CASE NO. 2:11-CV-06259-SRC-CLW

WHEREAS, pursuant to the Court's Order dated May 5, 2005, all pending and subsequently-filed Vioxx-related securities actions, including the above-captioned eight individual actions (the "Individual Actions") are "consolidated for all purposes" into *In re Merck & Co., Inc., Securities, Derivative & "ERISA" Litigation*, MDL No. 1658 (the "MDL");

WHEREAS, on October 6, 2011, the Parties to the following seven Individual Actions: *Stichting Pensioenfonds ABP v. Merck & Co., Inc., et al.*, No. 2:05-cv-05060-SRC-CLW; *AFA Livförsäkringsaktiebolag, et al. v. Merck & Co., Inc., et al.*, No. 07-cv-04024-SRC-CLW; *Allianz Global Investors Kapitalanlagegesellschaft MbH, et al. v. Merck & Co., Inc., et al.*, No. 07-cv-04451-SRC-CLW; *Norges Bank v. Merck & Co., Inc., et al.*, No. 07-cv-04021-SRC-CLW; *Deka Investment GmbH, et al. v. Merck & Co., Inc., et al.*, No. 07-cv-04022-SRC-CLW; *Union Asset Management Holding AG, et*

al. v. Merck & Co., Inc., et al., No. 07-cv-04023-SRC-CLW; and *DWS Investment GmbH, et al. v. Merck & Co., Inc., et al.*, No. 07-cv-04546-SRC-CLW, entered into a stipulation, which this Court “so ordered,” setting the deadline for Defendant Merck & Co., Inc. (“Merck”), all individual defendants other than Defendant Scolnick (the “Merck Individual Defendants” and, together with Merck, the “Merck Defendants”), and Defendant Scolnick (together, the “Defendants”) to move or otherwise respond to the Second Amended Complaint in *Stichting Pensioenfond ABP v. Merck & Co., Inc., et al.*, No. 2:05-cv-05060-SRC-CLW (the “ABP Action”) to January 20, 2012, and stayed the time for Defendants to move or otherwise respond to the six remaining actions until 45 days after a decision on any motions in the ABP action;

WHEREAS, on November 8, 2011, the Parties to *KBC Asset Management NV, et al. v. Merck & Co., Inc., et al.*, No. 2:11-cv-06259-SRC-CLW (the “KBC Action”), entered into a stipulation, which this Court “so ordered,” in which they agreed to treat the KBC Action as one of the Individual Actions and extend Defendants’ time to move or otherwise respond to the KBC Action until 45 days after a decision on any motions to dismiss in the ABP Action;

WHEREAS, this Court issued an opinion on Defendants’ motions to dismiss the Second Amended Complaint in the ABP Action on August 1, 2012 (the “August 1 Opinion”);

WHEREAS, in the August 1 Opinion, this Court granted Defendants’ motions to dismiss the Rule 10b-5(b) claim to the extent predicated on statements the Court found inactionable;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the Rule 10b-5(a) and (c) "scheme liability" claim;

WHEREAS, in the August 1 Opinion, this Court granted the Merck Defendants' motion to dismiss the § 20(a) control person claim as to Defendants Gilmartin, Anstice, Frazier, Lewent, and Kim;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the claim of common law fraud for inducing Plaintiff to purchase Merck stock;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the claim of common law fraud for inducing Plaintiff to hold Merck stock;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the claim of negligent misrepresentation for inducing Plaintiff to purchase Merck stock;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the claim of negligent misrepresentation for inducing Plaintiff to hold Merck stock;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the claim of civil conspiracy;

WHEREAS, the parties, claims, and allegations in the ABP Second Amended Complaint are substantially identical to the parties, claims, and allegations in the operative complaints in the other seven Individual Actions;

WHEREAS, the Parties do not wish to re-brief arguments already considered and ruled upon by this Court in the ABP Action;

IT IS HEREBY STIPULATED AND AGREED by and between the parties, through their undersigned counsel that:

1. The Parties to the above-captioned actions agree that any arguments raised by Defendants and/or Plaintiff in the ABP Action on Defendants' motions to dismiss the Second Amended Complaint shall not be re-briefed in the seven remaining Individual Actions, but shall be preserved for appeal as if such arguments had been raised in motions to dismiss and opposition to such motions in the seven remaining Individual Actions.

2. The Parties to the above-captioned actions agree that the claims dismissed in the August 1 Opinion in the ABP Action shall be deemed dismissed to the same extent in the seven remaining Individual Actions, but shall be preserved for appeal as if such arguments had been raised in motions to dismiss and opposition to such motions in the seven remaining Individual Actions. The claims dismissed in the August 1 Opinion are:

- a. The Rule 10b-5(b) claim to the extent predicated on statements the Court found inactionable;
- b. The Rule 10b-5(a) and (c) "scheme liability" claim;
- c. The § 20(a) control person claim against Defendants Gilmartin, Anstice, Frazier, Lewent, and Kim;
- d. The common law fraud claim for inducing Plaintiff to purchase Merck stock;

- e. The common law fraud claim for inducing Plaintiff to hold its Merck stock;
- f. The negligent misrepresentation claim for inducing Plaintiff to purchase Merck stock;
- g. The negligent misrepresentation claim for inducing Plaintiff to hold its Merck stock; and
- h. The civil conspiracy claim.

3. Nothing in this stipulation shall preclude the Parties to the seven remaining Individual Actions from advancing, in connection with any motion to dismiss, any argument that was not raised or decided in the ABP action.

4. Defendants have until September 17, 2012 to file and serve an answer to the Second Amended Complaint in the ABP Action.

DATED: August 13, 2012

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DATED: August 13, 2012

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Trygghetsfonden TSL, Alecta
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Arbetsmarknadsförsäkringar
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Skandinaviska Enskilda Banken AB on its own
behalf and on behalf of SEB Investment
Management AB, SEB Asset Management
S.A., and Gamla Livförsäkringsaktiebolaget
SEB Trygg Liv; Allianz Global Investors
Kapitalanlagegesellschaft MbH, Allianz
Global Investors Luxembourg S.A., and
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DATED: August 13, 2012

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DATED: August 10, 2012

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SO ORDERED: _____, 2012

Cathy L. Waldor
United States Magistrate Judge